

[Cite as *In re Estate of Norman*, 2010-Ohio-5920.]

COURT OF APPEALS
KNOX COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN THE MATTER OF:

THE ESTATE OF RICHARD EUGENE
NORMAN

JUDGES:

Hon. W. Scott Gwin, J.
Hon. Julie A. Edwards, P.J.
Hon. John W. Wise, J.

Case No. 10 CA 000011

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Knox County Court of
Common Pleas, Probate Division, Case No.
20071183

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

December 2, 2010

APPEARANCES:

For Appellant
William P. Bringman Co., L.P.A.

For Appellee
Estate of Eugene Norman

WILLIAM PAUL BRINGMAN

JANIE D. ROBERTS

Wise, J.

{¶1} Appellant William P. Bringman Co., L.P.A. appeals the decision of the Knox County Court of Common Pleas, Probate Division, denying his Exceptions and approving the Final Account in this matter.

{¶2} Appellee is Leona Irene Norman, Administrator of the Estate of Richard Eugene Norman, Deceased.

STATEMENT OF THE FACTS AND CASE

{¶3} Decedent, Richard Eugene Norman, died on June 6, 2007, domiciled in Knox County, Ohio.

{¶4} On August 7, 2007, with no other application for such being filed in the Knox County Probate Court, the president of William P. Bringman Co. L.P.A. filed an application for authority to administer the estate of said decedent. Appellant sought the opening of the Estate to allow for presentation of a creditor's claim of \$12,608.95 (plus interest at 10% per annum from May 4, 2007) for legal services provided to the decedent in a driving under the influence and administrative license suspension matter.

{¶5} By Entry docketed November 15, 2007, the probate court found that both parties were in agreement that there were currently no probate assets to administer. The trial court went on to state:

{¶6} "The issue in this matter is whether or not Mr. Norman transferred real property prior to his death to avoid paying his creditors, specifically [Appellant]. There seems to be no question that Mr. Norman did transfer all his interest in certain real estate to his wife. If [Appellant] can establish this transfer constitutes fraud through a

lawsuit filed in the General Division of this Court, then Mr. Norman's interest in this real property would be a probate asset and would require administration of his estate."

{¶7} On July 9, 2009, Leona Irene Norma, surviving spouse of the decedent, was appointed as Administrator of the decedent's estate. On her Application for Authority to Administer Estate, she listed \$12,600 as owed to her by the Estate for "funeral, real estate taxes paid, First Knox bank line of credit."

{¶8} An August 31, 2009. Appellant filed its "Supplement to Claim Heretofore Submitted Herein" with the Administrator.

{¶9} On October 2, 2009, such claim for services to the decedent was allowed with the exception of that part of the claim for interest past the date of decedent's death, which was rejected.

{¶10} On October 2, 2009, the Administrator filed a creditor's claim against the estate. Included therein were claims for \$8,306.50 for funeral cost, \$2,460.15 for a memorial, \$1,372.53 for real estate taxes, \$2,553.70 to First Knox National Bank for a line of credit, \$391.04 to Tillium Medical for medical expenses, as well as numerous utility payments and credit card payments made by Mrs. Norman on behalf of the decedent. She did not include in her Administrator claim a claim for widow's allowance or Administrator fee or reimbursement for attorney fees or an appraiser fee.

{¶11} On October 20, 2009, the Inventory and Appraisal and Schedule of Assets were filed, listing the decedent's one-half interest in the real estate, valued at \$52,500.00 as the sole asset of the Estate.

{¶12} On December 17, 2009, the Administrator withdrew all of her with the exception of “payment of the funeral bill, burial expenses, and costs of the estate, including attorney fees and administrator fee.”

{¶13} On December 17, 2009, Mrs. Norman also filed an Application for Family Allowance of \$40,000 as surviving spouse.

{¶14} By Journal Entry filed December 17, 2009, the trial court requested both parties to provide the court with legal briefs addressing the specific legal basis to either accept or reject Mrs. Norman’s claims for 1) the \$40,000 family allowance, 2) reimbursement of funeral and burial expenses, 3) other estate administration expenses such as attorney fees, administrator fees, appraisals and court costs.

{¶15} By Journal Entry filed on February 10, 2010, following the filing of briefs, the trial court found that Mrs. Norman was entitled to be reimbursed for any costs of estate administration she has paid including court costs, appraiser fees, and attorney fees. The court further found that she was entitled to reimbursement for certain funeral and burial expenses. The court predicated approval of such expenses upon the submission by Mrs. Norman of written proof in the form of detailed statements and receipts or canceled checks,

{¶16} On February 10, 2010, a final account was filed.

{¶17} On February 18, 2010, Exceptions to the proposed final account were timely filed by Appellant claiming the real estate should have been sold by the Administrator during the estate administration and that certain claims presented by the Administrator should not have been allowed.

{¶18} On April 8, 2010, the trial court conducted a hearing on the Exceptions to the proposed final account.

{¶19} By Journal Entry filed May 6, 2010, the trial court denied the exceptions and approved the final account, stating:

{¶20} "...The sole asset of this estate is a one half interest in the home shared by the decedent and his spouse at the time of his death. An appraiser acceptable to the Court has set the value of his own half interest at \$52,500. The Court has already ruled that Mrs. Norman is entitled to be reimbursed for costs of administration she has paid and for certain funeral and burial expenses. She is also entitled to claim the spousal allowance of \$40,000. Based on the figures in the proposed final account these authorized expenditures exceed the value of the sole asset of the estate.

{¶21} "The is nothing in the record of this case to indicate a sale of this property would generate more than \$52,500 or create any funds to pay Mr. Bringman. Without question, a sale of the one half interest in the marital real property would generate additional administration expenses for attorney fees, advertising, an auctioneer and a sales commission. This Court does not believe either equity or the statutory law of this state requires an exercise in futility.

{¶22} "Accordingly, the Court finds that all of the Exceptions filed by Mr. Bringman to be without merit. The final account is hereby approved. The Administrator and the attorney for the estate are directed to take the final steps necessary to close this estate."

{¶23} It is from this judgment Appellant now appeals, assigning the following error for our review:

ASSIGNMENT OF ERROR

{¶24} "I. THE TRIAL COURT ERRED IN OVERRULING THE EXCEPTIONS OF APPELLANT TO THE FINAL ACCOUNT AND APPROVING THE FINAL ACCOUNT OF APPELLEE IN THE ADMINISTRATION OF THE ESTATE OF RICHARD EUGENE NORMAN, DECEASED."

I.

{¶25} Under the sole assignment of error, appellant claims that the trial court erred in approving the final account in this matter. We disagree.

{¶26} Revised Code §2117.25 sets forth the order of priority in which an executor must pay debts, and provides as follows:

{¶27} (A) Every executor or administrator shall proceed with diligence to pay the debts of the decedent and shall apply the assets in the following order:

{¶28} "(1) Costs and expenses of administration;

{¶29} "(2) An amount, not exceeding four thousand dollars, for funeral expenses that are included in the bill of a funeral director, funeral expenses other than those in the bill of a funeral director that are approved by the probate court, and an amount, not exceeding three thousand dollars, for burial and cemetery expenses, including that portion of the funeral director's bill allocated to cemetery expenses that have been paid to the cemetery by the funeral director. ...

{¶30} "(3) The allowance for support made to the surviving spouse, minor children, or both under section 2106.13 of the Revised Code;

{¶31} "(4) Debts entitled to a preference under the laws of the United States;

{¶32} "(5) Expenses of the last sickness of the decedent;

{¶33} “(6) If the total bill of a funeral director for funeral expenses exceeds four thousand dollars, then, in addition to the amount described in division (A)(2) of this section, an amount, not exceeding two thousand dollars, for funeral expenses that are included in the bill and that exceed four thousand dollars;

{¶34} “(7) Personal property taxes, claims made under the medicaid estate recovery program instituted pursuant to section 5111.11 of the Revised Code, and obligations for which the decedent was personally liable to the state or any of its subdivisions;

{¶35} “(8) Debts for manual labor performed for the decedent within twelve months preceding the decedent's death, not exceeding three hundred dollars to any one person;

{¶36} “(9) Other debts for which claims have been presented and finally allowed.”

{¶37} R.C. §2117.25(C) further provides:

{¶38} “(C) Any natural person or fiduciary who pays a claim of any creditor described in division (A) of this section shall be subrogated to the rights of that creditor proportionate to the amount of the payment and shall be entitled to reimbursement for that amount in accordance with the priority of payments set forth in that division.

{¶39} “(D)(1) Chapters 2113. to 2125. of the Revised Code, relating to the manner in which and the time within which claims shall be presented, shall apply to claims set forth in divisions (A)(2), (6), and (8) of this section. Claims for an expense of administration or for the allowance for support need not be presented. The executor or

administrator shall pay debts included in divisions (A)(4) and (7) of this section, of which the executor or administrator has knowledge, regardless of presentation.

{¶40} “(E) No payments shall be made to creditors of one class until all those of the preceding class are fully paid or provided for. If the assets are insufficient to pay all the claims of one class, the creditors of that class shall be paid ratably.

{¶41} “(F) If it appears at any time that the assets have been exhausted in paying prior or preferred charges, allowances, or claims, those payments shall be a bar to an action on any claim not entitled to that priority or preference.”

{¶42} Appellant argues that the Administrator failed to assert her claims for reimbursement of attorney fees, appraiser fees, administratrix fees and widow's allowance within the three month window provided by R.C. 2117.02.

{¶43} As set forth above, R.C. §2117.25(D)(1) provides that claims for the administration of the estate and claims for allowance for support do not need to be filed within the three-month time frame provided for other claims.

{¶44} Appellant further argues that the trial court should have disallowed Mrs. Norman's claim for reimbursement of the funeral and burial expenses because such were paid by her as the surviving spouse and not as the administrator of the estate.

{¶45} Again, R.C. §2117.25(A) and (C) provide that the fiduciary is required to pay the funeral and burial expenses of the decedent and further is entitled to reimbursement for same. We fail to find any support for Appellant's argument that Mrs. Norman is not entitled to reimbursement because she is both the surviving spouse and the Administrator of the estate.

{¶46} Lastly, Appellant argues that the real estate in this matter should have been ordered to be sold to cover the decedent's debts.

{¶47} As explained by the trial court in its Journal Entry, the authorized expenditures set forth in the final account exceed the value of the sole asset of the estate, that being the decedent's one-half interest in the real estate.

{¶48} Based on the foregoing, we find Appellant's sole assignment of error not well-taken and hereby overrule same.

{¶49} The judgment of the Court of Common Pleas, Probate Division, Knox County, Ohio, is affirmed.

By Wise, J.

Edwards, P. J., and

Gwin, J., concur.

JUDGES

IN THE COURT OF APPEALS FOR KNOX COUNTY, OHIO
FIFTH APPELLATE DISTRICT

IN THE MATTER OF:

THE ESTATE OF
RICHARD EUGENE NORMAN

CASE NO. 08CA22

JUDGMENT ENTRY

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Knox County, Probate Court, Ohio is affirmed. Costs to appellant.

JUDGES